IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 38/2006
(Pukh Raj Vs. Smt. Shanti Devi)

Date of Order : 05/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Arvind Samdaria for the petitioner.
Mr. B.S.Rathore for the non-petitioner.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 5.12.2005 passed by Additional Sessions Judge, Fast Track No.1, Pali, Headquarter at Jaitaran (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 2.2.2005 passed by Additiional Chief Judicial Magistrate, Jaitaran (for short 'the trial court' hereinafter) granting monthly allowance of maintenance @ Rs. 500/- each in favour of non-petitioner and her minor son, was dismissed.

I have heard learned counsel for the parties. Perused the orders passed by the courts below.

It is contended by learned counsel for the petitioner that the non-petitioner earlier filed a complainant against the petitioner for the offence under Section 494 IPC which was compromised by the parties and thereafter the non-petitioner along with her minor son started living with the petitioner, however, subsequently, the non-petitioner at her own deserted the petitioner and therefore, the non-petitioner is not entitled for the maintenance. It is further contended that the second marriage alleged to have been contacted by the petitioner along with one Prem has not been established and therefore, the non-petitioner has no reasonable and probable cause to desert the petitioner and lastly it was contended that both the courts below fell in error in awarding the monthly allowance of maintenance from the date of application.

Learned counsel appearing for the non-petitioner supported the orders impugned.

Learned counsel for the petitioner has relied on a decision of Division Bench in Qamruddin Vs. Srimati Rashida 1992 (1) WLC (Raj.) 305 wherein this Court held that if the Court feels that the amount of maintenance should be ordered from the date of application there should be some reasons for

ordering so.

Sub-section (2) of Section 125 Cr.P.C. provides that any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

A Division Bench of this Court in Smt. Savita Sharma Vs. Shri Krishan Murari 1990 (1) RLR 400 held that the monthly allowance of interim maintenance should be granted from the date of application. The judgment in Smt. Savita Sharma Vs. Shri Krishan Murari (supra) is prior in time. However, it appears that the decision of Division Bench in Smt. Savita Sharma (supra) was not brought to the notice of the Division Bench in Qamruddin's case (supra). Even otherwise, decision in Qamruddin's case no where states that maintenance allowance should not be granted from the date of application. The language of Sub-section (2) of Section 125 Cr.P.C. is very much clear and the discretion is vested with the Court to award the maintenance from the date of application or order.

Keeping in view the provisions of Sub-section (2) of

Section 125 Cr.P.C., and the decision of Division Bench in Smt. Savita Sharma's case (supra), in my view, awarding maintenance from the date of application cannot be said to be erroneous. Both the courts below have concurrently found that the non-petitioner is entitled for the maintenance from the date of application.

So far as the contention of the learned counsel for the petitioner that it was the non-petitioner who herself without reasonable and probable cause deserted the petitioner is concerned; the non-petitioner very specifically came with a case that the petitioner contacted second marriage with one Prem and has been living with her as husband and wife and both of them subjected the non-petitioner to cruelty and turned her out from the matrimonal home. This averment finds mention in the appliation as also in the statement of witnesses. Explanation to Sub-section (3) of Section 125 Cr.P.C., provides that if a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

Keeping these provisions in view, in my view, the non-petitioner has a reasonable and probable cause for not living with the petitioner.

So far as awarding maintenance is concerned, there is evidence that the petitioner despite having sufficient means neglected the non-petitioner and therefore, failed to maintain her. In the circumstances, therefore, both the courts below were justified in granting maintenance in favour of non-petitioner and her son. A meagre amount of Rs.500/- per month granted in favour of each of the non-petitioners by the trial court and affirmed by the revisional court, in any manner, cannot be said to be excessive warranting interference in the inherent jurisdiction.

The criminal misc. petition has no force and is, therefore, dismissed.

(H.R.PANWAR),J.

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